EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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F'REAL FOODS, LLC and RICH PRODUCTS CORPORATION,	:	CIVIL ACTION
Plaintiffs,	:	
vs.	:	
HAMILTON BEACH BRANDS, INC., HERSHEY CREAMERY COMPANY and PAUL MILLS d/b/a MILLS BROTHERS MARKETS,	:	
	:	NO. 16-41 (CFC)
Defendants.	:	CONSOLIDATED

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Wilmington, Delaware
Thursday, April 11, 2018
1:06 o'clock, p.m.

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BEFORE: HONORABLE COLM F. CONNOLLY, U.S.D.C.J.

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APPEARANCES:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
BY: RODGER D, SMITH II, ESQ. and
MICHAEL J. FLYNN, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

APPEARANCES (Continued):

SIDEMAN & BANCROFT LLP
BY: GUY W. CHAMBERS, ESQ.
(San Francisco, California)

Counsel for Plaintiffs f'real Foods, LLC and Rich Products Corporation

DRINKER BIDDLE & REATH LLP
BY: FRANCIS DiGIOVANNI, ESQ. and THATCHER A. RAHMEIER, ESQ.

-and-

DRINKER BIDDLE & REATH LLP
BY: WILLIAM S. FOSTER, JR., ESQ.
BRIANNA L. SILVERSTEIN, ESQ.
(Washington, D.C.)

Counsel for Defendants

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of those standards.

THE COURT: Okay. So let me ask you this: Say the standards are different and I will say I found, it struck me that if I were writing the law from scratch, it might make sense to distinguish 315 from 102. 315 seems to be concerned about process, judicial efficiency. 102 seems to be concerned about substantive, validity of patents. I can see that.

But my problem having said that is, as I look at Jazz Pharmaceuticals, Inc. against Amneal Pharmaceuticals LLC, 895 F.3d, 1347, a Federal Circuit case, it says, "A reference is considered publicly acceptable upon a showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence can locate it." That's exactly what Mr. Flynn said. That seems to be the exact same standard that's at issue with '315.

MS. SILVERSTEIN: We agree with you, that's the standard for whether it's publicly available, but we disagree that it's the same as the '315. As a practical matter, it can't be the same, because then an IPR petitioner that is unsuccessful in the IPR would be completely estopped.

THE COURT: Okay. But then you do agree that

you said that Sato wasn't -- isn't prior art, so I don't know --

THE COURT: I said it's not publicly accessible. I mean, if I were writing the law, I would let you have it. They say publicly accessible is determined by reasonable diligence. We don't have to revisit that.

MR. FOSTER: But, yes, that's not an issue in the trial anymore, so that shouldn't come in. The other thing was an indefiniteness issue. Again, that's a different proceedings. 112 can't be challenged at the PTAB and that's for the Court anyway.

I don't know what documents they plan to use. That's why we have that caveat. But we agreed generally. Of course, they can cross-examine. And the courts are pretty consistent in terms of not letting it in because it's too prejudicial, but at the same time trying to work with the evidence that was created this those cases.

THE COURT: All right. So I'm not going to require -- you know, if they're going to use it properly under the ruse to impeach a prior inconsistent statement, they're going to have to establish first that they got a statement, that it isn't consistent.

I have to say at the last patent trial I had, I had a patent attorney literally try to impeach a witness with a prior consistent statement, and that was news to me,